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1 JaVonne M. Phillips, Esq. SBN 187474

2 Mishaela J. Graves, Esq. SBN 259765

3 **McCarthy & Holthus, LLP**

4 1770 Fourth Avenue

5 San Diego, CA 92101

6 Phone (619) 685-4800

7 Fax (619) 685-4810

8 Attorney for: Secured Creditor,

9 Wells Fargo Bank, N.A. as Trustee under Pooling and Servicing Agreement Dated as of August
10 1, 2005 Asset-Backed Pass-Through Certificates Series 2005-WHQ4, it assignees and/or
11 successors, and the servicing agent Barclays Capital Real Estate Inc. dba HomEq

12 UNITED STATES BANKRUPTCY COURT

13 EASTERN DISTRICT OF CALIFORNIA

14 SACRAMENTO DIVISION

15 In re:) Case No. 10-21264

16)

17 Nancy Kain,) DC No. MIG-1

18)

19 Debtor.) Chapter 7

20)

21 Wells Fargo Bank, N.A. as Trustee)

22 under Pooling and Servicing Agreement) **MOTION FOR RELIEF FROM**

23 Dated as of August 1, 2005 Asset-) **AUTOMATIC STAY (UNLAWFUL**

24 Backed Pass-Through Certificates Series) **DETAINDER)**

25 2005-WHQ4, it assignees and/or)

26 successors, and the servicing agent)

27 Barclays Capital Real Estate Inc. dba) Date: 03/16/2010

28 HomEq Servicing,) Time: 9:31 AM

29 Secured Creditor,) Ctrm.: 32, Sixth Floor

Secured Creditor,) Place: 501 I Street,
v.)) Sacramento, CA

)

) Judge: Thomas Holman

Nancy Kain, Debtor; Jan P. Johnson,)

Chapter 7 Trustee,)

)

Respondents.)

)

1 Wells Fargo Bank, N.A. as Trustee under Pooling and Servicing Agreement Dated as of
2 August 1, 2005 Asset-Backed Pass-Through Certificates Series 2005-WHQ4, its assignees
3 and/or successors, and the servicing agent Barclays Capital Real Estate Inc. dba HomEq
4 Servicing (“Movant” herein), moves this Court for an Order Terminating the Automatic Stay of
5 11 U.S.C. § 362, as to moving party (and the Trustee under the Deed of Trust securing moving
6 party’s claim) so that moving party and its Trustee may commence and continue all acts
7 necessary to obtain possession of the property commonly known as 2161 Shielah Way,
8 Sacramento, CA 95822, (“Property” herein). Cause exists because, as of petition date, Debtor
9 had no right to continue occupancy of the premises as Movant acquired title to the premises by
10 foreclosure sale pre-petition and recorded the deed within the period provided by state law for
perfection.

11 A copy of Secured Creditor’s Relief From Stay Information Sheet is filed concurrently
12 herewith as a separate document pursuant to Local Rules of Court.

13 Prior to the filing of the instant bankruptcy petition, Movant sold the property at public
14 auction on 06/19/2007. A Trustee’s Deed Upon Sale conveying the property to Movant was
15 recorded in the Official Records of Sacramento County, California on 06/29/2007, within the
16 period provided by state law for perfection. A copy of said Trustee’s Deed is attached hereto
17 marked **Exhibit “1”** and made a part hereof.

18 A Notice for Possession was posted on 06/27/2007. A copy of said Notice for
19 Possession and Proof of Service is attached hereto marked **Exhibit “2”**. The Summons and
20 Complaint was filed with the court on 07/25/2007 (Case No. 07UD06360). A copy of filed
Summons and Complaint is attached hereto marked **Exhibit “3”**.

21 The matter was initially set for an Unlawful Detainer trial on 11/09/2007, but on that
22 date, Debtor filed a Chapter 13 Bankruptcy Petition in the United States Bankruptcy Court,
23 Eastern District of California, Case No. 07-29572. Debtor was subsequently dismissed on
24 02/14/2008 and the case was terminated on 09-17/2008. A true and correct copy of the PACER
25 Docket is attached hereto as **Exhibit “4”**.

26 The matter was again set for an Unlawful Detainer trial, this time on 03/26/2008. On
27 03/25/2008, Debtor’s co-defendant in the Unlawful Detainer matter, Gil Daggett, filed a
28 Chapter 13 Bankruptcy Petition in the United States Bankruptcy Court, Eastern District of
29 California, Case No. 08-23629. Mr. Daggett was subsequently dismissed on 06/27/2008 and the

1 case was terminated on 12/22/2009. A true and correct copy of the PACER Docket is attached
2 hereto as **Exhibit “5”**.

3 The matter was again set for an Unlawful Detainer trial, this time on 08/20/2008. On
4 08/19/2008, Debtor Nancy Kain filed a second Chapter 13 Bankruptcy Petition in the United
5 States Bankruptcy Court, Eastern District of California, Case No. 08-31576. Debtor was
6 dismissed on 02/19/2009 for failure to make plan payments and the case was terminated on
7 06/09/2009. A true and correct copy of the PACER Docket is attached hereto as **Exhibit “6”**.

8 The matter was again set for an Unlawful Detainer trial, this time on 02/02/2009. On
9 01/29/2009, Debtor’s co-defendant in the Unlawful Detainer matter, Gil Daggett filed a second
10 Chapter 13 Bankruptcy Petition in the United States Bankruptcy Court, Eastern District of
11 California, Case No. 09-21459. Debtor was subsequently dismissed on 03/16/2009 for failure
12 to file information and the case was terminated on 09/28/2009. A true and correct copy of the
13 PACER Docket is attached hereto as **Exhibit “7”**.

14 The matter was again set for an Unlawful Detainer trial, this time on 05/26/2009. On that
15 same date, Debtor’s co-defendant in the Unlawful Detainer matter, Gil Daggett filed a third
16 Chapter 13 Bankruptcy Petition in the United States Bankruptcy Court, Eastern District of
17 California, Case No. 09-30538. Debtor was subsequently dismissed on 07/30/2009 and the case
18 was terminated on 10/27/2009. A true and correct copy of the PACER Docket is attached
hereto as **Exhibit “8”**.

19 The matter was once again set for an Unlawful Detainer trial on 10/19/2009. On that
20 date, Debtor and co-defendant Gil Daggett appeared before Judge Jerilyn L. Borack. Debtor
21 and her co-defendant made a settlement offer and the matter was continued to 10/26/2009. On
22 10/26/2009, all parties again appeared before Judge Borack and agreed to a stipulated judgment
23 reflected in the court record and memorialized in the order entered on 12/15/2009. A copy of
24 said Stipulated Judgment and the Order is attached hereto marked **Exhibit “9”**. A Writ of
25 Possession was subsequently issued on 01/08/2010. A copy of said Writ is attached hereto
marked **Exhibit “10”**.

26 The instant case was filed on 01/20/2010 and Movant alleges that this is the **sixth**
27 bankruptcy filed in bad faith as a scheme to hinder, delay or defraud creditors. Debtors have
28 spent the better part of three years in the subject Property, without making regular payments to
29 Movant, and filing for bankruptcy every single time the matter is set for an Unlawful Detainer

1 trial. Furthermore, Debtor and her co-defendant in the Unlawful Detainer matter stood before
2 the Court on 10/26/2009 and stated, under penalty of perjury, that they fully understood the
3 terms of the Stipulated Judgment into which they were entering and agreed to be bound by said
4 terms. Instead of tendering the agreed-upon purchase price or vacating and paying the agreed-
5 upon monetary damages to Movant by 01/05/2010 as agreed, Debtor filed her third bankruptcy
6 petition.

7 Neither Debtor nor her co-defendant in the Unlawful Detainer matter are an owner of the
8 subject Property and such Property is not necessary to an effective reorganization. The Debtor
9 continues to be in possession of the subject property without Movant's permission or consent
10 and in violation of the Stipulated Judgment Debtor and co-defendant willingly entered into on
11 10/16/2009. Movant is unfairly delayed from obtaining possession of the subject Property
12 because of the Debtor and her co-defendant in the Unlawful Detainer matter's multiple bad faith
13 bankruptcy filings and cause exists under 11 U.S.C. § 362 for the stay to be terminated. Movant
14 is also precluded from perfecting title and proceeding with all post-foreclosure remedies to
15 obtain possession of the subject Property because of the multiple bad faith bankruptcy filings by
16 this Debtor and her co-defendant in the Unlawful Detainer matter. Accordingly, relief from the
17 automatic stay should be granted to Secured Creditor pursuant to 11 U.S.C. § 362.

18 WHEREFORE, Secured Creditor prays for judgment as follows:

- 19 1. Termination of the stay to allow Movant to enforce its remedies to obtain possession
20 of the Property in accordance with applicable law.
- 21 2. For an Order that is binding and effective in any bankruptcy case commenced by or
22 against the above-named Debtor for a period of 180 days, so that no further
23 automatic stay shall arise in that case as to the Property.
- 24 3. For an Order that the Debtor be enjoined from transferring all or any portion of the
25 Property for a period of 180 days from the hearing of this Motion, and any transfer in
26 violation of this Order be deemed void.
- 27 4. For an Order binding an effective in any bankruptcy case commenced by or against
28 any successors, transferees, assignees or co-defendant in the Unlawful Detainer
29 matter of the above-named Debtor for a period of 180 days from the hearing of this

1 motion upon recording of a copy of this Order or giving appropriate notice of its
2 entry in compliance with applicable non-bankruptcy law.

3 5. For an Order that the 14-day described by Bankruptcy Rule 4001(a)(3) be waived.
4 6. For attorneys' fees and costs incurred herein.
5 7. For such other relief as the Court deems proper.

6 Dated: February 25, 2010

7 McCarthy & Holthus, LLP

8 By: /s/ Mishaela J. Graves

9 Mishaela J. Graves, Esq.

10 Attorney for Secured Creditor,
11 Wells Fargo Bank, N.A. as Trustee
12 under Pooling and Servicing

13 Agreement Dated as of August 1, 2005
14 Asset-Backed Pass-Through
Certificates Series 2005-WHQ4, its
15 assignees and/or successors, and the
servicing agent Barclays Capital Real
Estate Inc. dba HomEq

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